

VZCZCXR07761
RR RUEHCHI RUEHDT RUEHNH
DE RUEHHM #0584/01 2330310

ZNR UUUUU ZZH
R 210310Z AUG 09
FM AMCONSUL HO CHI MINH CITY
TO RUEHC/SECSTATE WASHDC 6002
INFO RUEHHI/AMEMBASSY HANOI 3902
RUCNASE/ASEAN MEMBER COLLECTIVE
RHHMUNA/USPACOM HONOLULU HI
RUEHHM/AMCONSUL HO CHI MINH CITY 6238

UNCLAS SECTION 01 OF 02 HO CHI MINH CITY 000584

SENSITIVE
SIPDIS

STATE FOR EAP/MLS AND EEB/TPP/IPE JURBAN
STATE FOR EEB/TPP/IPE FOR HALLOCK, WATTS, AND KEAT
STATE ALSO PASS USTR DBISBEE AND RBAE

E.O. 12958: N/A

TAGS: [ECON](#) [KIPR](#) [EAID](#) [ETRD](#) [VM](#)
SUBJECT: BIG IPR BUST SUGGESTS PROGRESS, BUT POLITICS ALSO PLAYED A
ROLE

REF: A) HANOI 032 AND PREVIOUS B) HCMC 551 AND PREVIOUS

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¶1. (SBU) Summary: An interagency team charged with enforcing intellectual property rights (IPR) raided a factory and a private house in Ho Chi Minh City last month, confiscating close to 100 boxes of pirated CDs and DVDs as well as the industrial-scale equipment used to manufacture them. The aggressiveness in pursuing this particular case may well have as much to do with the content of many of the discs -- pornography and a variety show with anti-communist digs deemed "reactionary" by the GVN. These factors, combined with the size of the operation, means authorities may deem the case serious enough to pursue criminal penalties. While the raid is a positive sign of continued Vietnamese efforts to improve IPR enforcement, it remains to be seen whether this bust will be a one-off event, or the beginning of an improved, sustained crackdown on copyright infringement. The Market Management Bureau, government entity charged with fighting counterfeit products and digital piracy, appears to be making a good effort to be as effective as they can in a still unclear legal environment. End Summary.

Grabbing the Goods

¶2. (SBU) EconOff met recently with HCMC Market Management Board (MMB) Deputy Chief Le Van Lieu and MMB Professional Affairs Chief Duong Cong Khanh to discuss a July 3rd raid on a large counterfeit CD/DVD operation in the Go Vap district of Ho Chi Minh City. According to Mr. Khanh, Inter-Agency Team 814 (under the Department of Culture, Sports and Tourism) confiscated two industrial-type disc making machines in addition to 11 boxes of DVDs and CDs with no stamps and no brands. Later the same day, the team raided the home of the company's owner and confiscated 280 master DVDs and CDs, one CPU, one laptop and 14 writing drives, and an additional 84 boxes of discs. Many of the DVDs are uncopyrighted copies of Vietnamese overseas performance shows with sensitive anti-GVN content.

¶3. (SBU) MMB officials said they consider this to be a sizable bust and that the scale of the operation as well as the content of the DVDs is serious enough to warrant possible criminal prosecutions. According to local media, the perpetrators have many supply contracts, each worth between USD 1,685 and USD 2,247. MMB expressed doubt that other production facilities of this scale exist in Ho Chi Minh City, noting that it is hard to keep big production facilities under wraps and that very low-priced CDs and DVDs flooding in from China usually discourage Vietnamese from producing them locally. Mr. Khanh said he does believe, however, other low-scale production rings likely abound around HCMC and its neighboring provinces.

IPR, Pornography and Politics

¶4. (SBU) While it is good to see a major raid on a pirate CD/DVD shop, the fact is that IPR concerns were not the only motivation for July's decisive enforcement action. The politically sensitive nature of the materials is also significant. Among the CDs and DVDs confiscated, many contained pornographic material while others contained something perhaps even worse in Vietnam -- "reactionary" materials. Many discs were copies of "Paris By Night," a popular variety show often performed in Orange County, California, that is classified as a "reactionary cultural product" by the GVN because of its anti-communist digs and references. "Paris By Night" cannot be legally purchased in Vietnam and Vietnamese who perform in the show -- even if they only sign or make non-controversial statements -- are banned from performing on their return to Vietnam. The fact that the factory was producing and distributing this material increases the likelihood that the GVN will pursue criminal penalties in this particular case but may not necessarily reflect an overall increased attention to IPR violators. Indeed, compared to genuine concerns about IPR infringement, the material's political content may have been an equal if not leading motivating factor for the July 3 bust.

Market Management Bureau: Organization and Recent Record

¶5. (SBU) Administered by the HCMC Department of Industry and Trade, the MMB is mandated to monitor and inspect suspected cases of IPR violations and trade fraud practices. In Ho Chi Minh City, MMB has a total staff of 500, which is divided into three main sections: Administration, Organizational Affairs (OA), and Professional Affairs (PA). The PA section oversees 28 inspection teams (24 teams at the district level and four mobile teams) and focuses on rights infringement, counterfeit goods, as well as brand and design infringement. MMB transfers any cases deemed as "serious violations," or with value of violated goods

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exceeding USD 1,700, to the economic police.

¶6. (SBU) Mr. Khanh detailed a listing of MMB's accomplishments over the last 18 months. From the beginning of 2008 through the first six months of 2009, the agency has handled 102 cases of IPR infringement and imposed a total of USD 35,000 in administrative penalties. Of the total cases, 48 were imposed between January and June 2009. If that rate continues, the total amount in 2009 would double that of 2008. Khanh estimates the value of violated goods, produced primarily in China, at around USD 150,000. Violations have mostly been in the following categories: CDs and DVDs (43,000), footwear, clothing, printer cartridges, calculators, handbags and sunglasses.

Limitations of the Law

¶7. (SBU) Although Mr. Khanh said his agency is eager to tackle IPR violators, barriers in the law still inhibit swift action. For example, article 105 of the IPR law stipulates that the rights holder must file a formal complaint in order for the MMB (or any other enforcement agency) to proceed with a piracy case. Similarly, another article stipulates that the rights holders must send a "cease-and-desist" letter to the violators before enforcement agencies can act. One small exception to this rule are cases where the copyright violations involve very famous brands such as Rolex watches or Gucci bags. In these instances, MMB is authorized to confiscate the goods even without a complaint but can't impose further penalties until the rights owners initiate a formal complaint. Mr. Khanh said that despite best efforts, it was often difficult to access rights owners or their rightful representatives, thus keeping the MMB's hands tied. In addition, his agency also receives many calls from provincial MMBs requesting assistance in contacting with rights holders, but because neither the provincial nor district MMB's are able to find them, the cases are not pursued.

¶8. (SBU) To circumvent the many limitations on his agencies

efforts, MMB has tried to impose fines on violators for other related charges, such as smuggling or importing goods without a license. Mr. Khanh added, however, that these measures are less desirable than actual IPR sanctions since the associated fines are lower than for IPR violations.

Outside Support

¶9. (SBU) MMB said that although it can be difficult to locate or get rights holders' assistance, it receives strong cooperation from some well-known brands, such as Nike, Adidas, and Hennessy.

Mr. Khanh noted that Nike is one of several companies that have provided training to MMB staff, which has enabled MMB them to detect the differences between genuine and counterfeit goods. He emphasized the utility of such training and MMB's interest in participating in any USG-sponsored IPR training or other technical assistance in the future.

Comment

¶10. (SBU) While the content of many of the discs seized during the July 3 raid may play a role in how aggressively the police and courts pursue this particular case, the simple fact that the MMB is on their toes and looking for creative ways to do their job effectively in a challenging environment is good news. The fact that crackdowns like this are still rare relative to rampant violations, however, underscores Vietnam's continued shortcomings in this area. Notwithstanding MMB's statements, provisions requiring rights-holders' permission before authorities can pursue IPR violators technically were removed with the passage of the new IPR law. The problem lies in the slow promulgation of corresponding regulations as well as the slow propagation of new rules to the district level. Confusion about IPR regulations among judges and enforcement bodies such as the MMB persists, hampering further progress.

¶11. (U) This cable was coordinated with Embassy Hanoi.
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